IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 114 OF 1997

Mrs. Jayshree w/o Deepak Chavan ... Petitioner/Applicant (Orig. Petitioner)

Verus

Mr. Deepak Mahadeo Chavan ... Respondent (Orig. Respondent)

The State of Maharashtra

Mr. Santosh Chari for the Applicant
Mr. Pankaj Das i/b Mr. R.S. Datar for Respondent No. 1
Ms. V.R. Bhosale APP for the State.

CORAM : J.N. PATEL

&

A.A.

SAYED, JJ.

DATE : June,

2007

ORAL JUDGMENT [Per A.A. Sayed, J]:

1. The above Criminal Revision Application is preferred by the Applicant wife against order and judgment dated 6th March 1997 passed by the Family Court in Maintenance Petition No. E-576/95 under section 125 of the Code of Criminal Procedure, 1973, whereby the Applicant wife's prayer for maintenance was rejected and maintenance of Rs. 350/- p.m. only was awarded to her minor daughter.
2. Aggrieved by the above order and judgment of the Trial Court, the Applicant wife has filed this Revision Application praying to set aside the said order and judgment and to grant her maintenance of Rs. 500/- p.m. for herself (which was rejected by the Trial Court) and for enhancement, by granting maintenance of 500/- p.m. to her daughter Neelam (from Rs. 350/- p.m. granted by the Trial Court) by the Respondent husband, in all amounting to Rs. 1,000/- p.m. for herself and her daughter as prayed by her in the Trial Court.
3. It is the case of the Applicant wife in her Maintenance Application before the Trial Court that she and the Respondent got married on 27-12-1986 at Malad, Bombay and their marriage was solemnized according to Hindu Vedic Rites and out of the said wedlock one daughter named Neelam was born and who was then about 7 years of age.

4. The Applicant wife has alleged ill-treatment, including assault and torture at the hands of her husband at the instigation of his relatives after their marriage. According to the Petitioner- wife, the Respondent husband used to pressurize her to demand money from her parents and she has further stated that she used to work in the matrimonial home from early morning till late night and she and her daughter were not taken care of and were not given proper food, clothing and shelter by him and his family members
5. It was further stated that she had lodged various complaints to the Police including compliant u/s 498-A and section 506(II) IPC r/w 114 IPC in 24th Court, Borivali and on one occasion she consumed Baygon Spray and was required to be admitted to Megha Surgical Hospital, Malad (East), Bombay. The Applicant wife has stated that on the Respondent husband's representation, on one occasion when she had left her matrimonial home that he and his relatives would treat her properly, she went back to her matrimonial home, however they did not mend their ways.
6. According to the Applicant wife, ultimately, since the month of May 1994, she was constrained to permanently leave the matrimonial home and has been residing with her minor daughter at her parents place of residence. Moreover, she is unemployed and

cannot live at the mercy of her parents indefinitely. She has further stated that the Respondent husband is gainfully employed and is having a monthly income of about Rs. 3,000/- as well as other sources of income and he has failed and neglected to maintain the Applicant wife and her minor daughter.

7. On the other hand, the Respondent husband has resisted the claim of the Applicant wife by filing his Written Statement in the Trial Court. He has denied the allegations of the Applicant wife and has stated that he has treated the Applicant wife and their daughter very well and the Applicant wife has left their matrimonial home without his consent and has disrupted the studies of their daughter and wants to falsely implicate the Respondent husband for offences, which he has not committed. According to him, he is staying in the house with this old mother whom he is maintaining and he is still ready to maintain the Applicant wife and their daughter and lead a happy married life. He has further submitted that the Applicant wife is working as Embroidery worker and earns Rs. 1,500/- p.m. and is able to maintain herself and hence her prayer for maintenance cannot be granted. He has also averred that he is working a peon with Govt. Central Press Information Bureau ready and willing to maintain the Applicant wife and their minor daughter.

8. We have heard the learned Counsel for the parties. The short point which arises for our consideration is whether the Trial Court was right in rejecting the prayer for maintenance of Rs. 500/- p.m to the Applicant wife and granting only Rs. 350/- pm instead of Rs. 500/- p.m as prayed towards the maintenance of the daughter Neelam.
9. The Learned Counsel for the Applicant wife submitted that the Trial Court has erred in rejecting the claim of maintenance of the Applicant wife and also erred in granting maintenance of an amount of Rs. 350/- p.m only instead of Rs. 500/- p.m towards the maintenance of the daughter. The Ld. Counsel submitted that the Applicant wife is unemployed and is unable to maintain herself and her daughter and is not able to make her two ends meet and the Respondent husband has failed and neglected to maintain her and her daughter. It is urged before us that the Applicant wife had no choice, but to leave her matrimonial home in view of the increasing cruelty and torture of the Applicant wife at the hands of the Respondent husband and other relatives and there was even an attempt by the Applicant wife to commit suicide. The Ld. Trial Court has therefore committed a grave error in observing that the Applicant wife had left her matrimonial home herself without the consent of the Respondent husband and therefore not entitled to

maintenance. The Ld. Counsel submitted that there is nothing brought on record to show that the Applicant wife was earning, except the bare word of the Respondent husband that the Applicant wife was earning by selling utensils from house to house. It is submitted that the Respondent husband is a Govt. employee and earning a minimum amount of Rs. 3000/- p.m. It is further submitted that the Respondent husand's mother is getting pension of Rs. 500/- and therefore does not need to be looked after financially by the Respondent husband.

10. Per contra, the Ld. Counsel for the Respondent husband submitted that the Applicant wife is not entitled to any maintenance and that the maintenance granted towards the maintenance of the daughter did not require to be enhanced. It is submitted that the Applicant wife had left the matrimonial home on her own volition alongwith the daughter and that he was always ready and willing to take the Respondent wife and her daughter back and maintain them provided they came back to their matrimonial home. It is further submitted that that Applicant wife is an embroidery worker and earning by doing embroidery work and also selling utensils and that she is therefore capable of maintaining herself and has sufficient income of Rs. 1500/- p.m. and there is therefore no question of

granting her any maintenance. It is therefore urged that the Revision Application be dismissed.

11. We have considered the rival contentions of the parties.

12. We find that there is nothing on record to show that the wife was earning a sum of Rs. 1,500/- per month as alleged by the Respondent husband. Moreover in the written statement it is alleged that the Applicant wife was earning by doing embroidery work and later an improvement has been made in the evidence to add that she is also selling utensils from house to house in exchange of clothes. If it is true that the Applicant wife is driven to sell utensils and goes from house to house to sell them, it is indeed a sorry state of affairs for the poor wife. It may be possible that she is doing odd jobs to sustain herself and her daughter, but this would not in itself prove that she has income to maintain herself. Surely, the Petitioner wife cannot to be driven to vagrancy and destitution. We may hasten to add here that Section 125 of Code of Criminal Procedure came into being for the very purpose ie. to avoid the hapless wife to be a victim and be driven to vagrancy and destitution.

13. In para 14 of the impugned judgment the Ld. Trial Court judge has observed thus – " It is true that respondent is not able to bring any proof as the Applicant (wrongly typed as Respondent) is selling

utensils in exchange of clothes and she goes from house to house for doing work. I therefore, hold that she must be earning some amount out of the said work hence, it cannot be said that she does not have any source of income." We find that the above observations of the Trial Court are based on conjectures and we set aside these observations of the Trial Court.

14. We further find that what has weighted with that the Ld. Trial Court Judge is the statement by the Respondent husband that he is ready and willing to take back the Applicant wife and her daughter and is ready and willing to maintain them. What we have found in most matrimonial cases is that this defence is routinely taken by the husbands merely to avoid payment of maintenance by them. In the instant case, it has come on record that there were a number of complaints filed against the Respondent husband by the Applicant wife including complaint under section 498A of the Code of Criminal Procedure and there was even an attempt to commit suicide by the Applicant wife and that she was required to be admitted to hospital and stayed in the hospital for about 4 days. To our mind these circumstances would be enough justification for the wife so as to refuse to go back to her matrimonial home and she cannot be denied maintenance on this ground in the instant case. We

have also noted that it has now been more than 13 years since the parties are residing separately.

15. Moreover admittedly the Respondent husband is employed with Govt. Central Press Information Bureau and earning salary of about 2,300/- . Nothing is produced before us relating to the increase in salary of the Respondent husband from 1997 when the Maintenance Petition filed till date i.e. 2007. However we can safely presume that with the increase in the index, increases in the salaries due to Fifth Pay Commission, etc., the salary of the Respondent husband cannot in any event be less than Rs. 3,000/- p.m. Taking into consideration the fact that the husband has sufficient means to provide maintenance to Applicant wife and their daughter, we are of the view that the Applicant wife is entitled to maintenance of Rs. 500/- p.m. as prayed by her and we further increase the maintenance of the daughter Neelam from Rs. 350/- p.m granted by the Trial Court to Rs. 500/- p.m, as prayed by her in the Maintenance Petition.

16. In the result, the impugned order and judgment is quashed and set aside in so far as it denies to the Applicant wife maintenance and the Respondent husband is directed to pay a sum of Rs. 500/- per month to the Applicant wife from the date of filing of this Revision Application. The Respondent husband is further directed to pay a sum of Rs. 500/- per month,

instead of Rs. 350/- awarded by the Trial Court, towards the maintenance of the daughter Neelam.

17. The Revision Application is allowed with costs. Rule is made absolute accordingly

(J.N. PATEL J)

(A.A. SAYED J)

This extract is taken from *Rajathi v. C. Ganesan, (1999) 6 SCC 326* , at page 329 :

Proceedings under Section 125 of the Code are of a summary nature. This section is intended to provide immediate relief to the wife, minor children and parents, who are unable to maintain themselves. It comes into play when the husband having sufficient means neglects or refuses to maintain her, she being unable to maintain herself. Section 125 of the Code of Criminal Procedure reads as under:

"125. *Order for maintenance of wives, children and parents* .—(1) If any person having sufficient means neglects or refuses to maintain—

(*a*) his wife, unable to maintain herself, or
(*b*) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
(*c*) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where

such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
(*d*) his father or mother, unable to maintain himself or herself,

a Magistrate of the First Class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (*b*) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Explanation .—For the purposes of this Chapter,—

(*a*) ‘minor’ means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875), is deemed not to have attained his majority;
(*b*) ‘wife’ includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.
(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the

whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:
Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the court to levy such amount within a period of one year from the date on which it became due:
Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.
Explanation .—If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.
(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.
(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

Disclaimer: The text is computer generated. The user *must* verify the authenticity of the extracted portion with the original in Supreme Court Cases.

In the instant case Section 125 (4) is in issue in the present case,

This extract is taken from *Rajathi v. C. Ganesan, (1999) 6 SCC 326* , at page 330 :

In Rajathi vs. C. Ganesan – (1999) 6 SCC 326 whilst referring to the judgment of the High Court, the Apex Court held – "It (i.e High Court) rather unnecessarily puts the burden on the wife to prove that she was unable to maintain herself. The words "unable to maintain herself" would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after the desertion to survive somehow. Section 125 is enacted on the premise that it is the obligation of the husband to maintain his wife, children and parents. It will, therefore, be for him to show that he has no sufficient means to discharge his obligation and that he did not neglect or refuse to maintain them or any one of them.

Thus in the instant case, the burden was upon the husband to 13.

ThsssssssssThus sThis extract is taken from *Rajathi v. C. Ganesan, (1999) 6 SCC 326* , at page 331 :

We may also have a look at the provisions of the Hindu Adoptions and Maintenance Act, 1956, which provides for maintenance to a Hindu wife. Under Section 18 of this Act a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime. Under sub-section (2) she will be entitled to live separately from her husband without forfeiting her claim to maintenance,—

"(*a*) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her;
(*b*) if he has treated her with such cruelty as to

cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;
(*c*) if he is suffering from a virulent form of leprosy;
(*d*) if he has any other wife living;
(*e*) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;
(*f*) if he has ceased to be a Hindu by conversion to another religion;
(*g*) if there is any other cause justifying her living separately."

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Subjected to cruelty.

Failed to establish that the Applicant wife has she has left the matrimonial house without sufficient reason and that the Applicant wife and and her daughter are having sufficient means to be able to maintain themselves.

The wife is not entitled to claim separate maintenance on three grounds : (a) if she is living in adultery (b) if she has left the matrimonial house without sufficient reason ; (3) refused to live with her husband or if they are separated by mutual consent. For this purpose, it would be pertinent to refer to Sub-section (4) of Section 125 of the Criminal Procedure Code, 1973. Sub-section(4) of Section 125 reads thus:

"125(4) : No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reasons, he refuses to live with her husband, or if they are living separately be mutual consent."